

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

KEVIN C. BRATHWAITE  
Plaintiff

v.

C.A. # 007-006, G.M.S

JURY TRIAL DEMANDED

CORRECTIONAL MEDICAL  
SERVICES, SCOTT  
ALTMAN AND CATHY  
KIONKE  
defendants



MOTION FOR INJUNCTIVE RELIEF

COMES NOW, The Plaintiff, Kevin C. Brathwaite, requesting that this honorable court issue an injunction to enforce his constitutional right to have his dental needs properly treated. To support this motion, this Plaintiff offers the following:

1. This Plaintiff is incarcerated at the Delaware Correctional Center, in Smyrna Delaware.

2. These defendants are contracted by the state of Delaware to provide medical and dental care to all inmates in the state.

3. Over the past two and a half years this plaintiff has made numerous attempts by way of sick call request, grievances and letters, to have his dental problems treated.

4. On June, 8<sup>th</sup>, 2006 these defendants denied this plaintiff's grievances.

5. This plaintiff appealed the grievances to the outside grievance review committee. And as a result of their review and investigation, the administrative review board granted this plaintiff's appeal. The board upheld the grievance request based on the merits of the grievance.

See, attached Exhibits

6. These defendant have a legal and constitutional obligation to properly

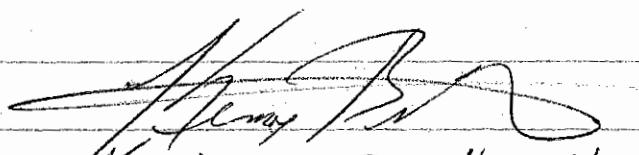
treat this Plaintiff for all medical and dental needs.

7. Prison health care administrators nationwide were well advised to study the new C.D.C.R. PLAN to formulate plans for their own jurisdictions. See, Perez v. Tilton U.S.D.C. Nd, Cal. C.A. No. 3:05 CV. 5241

8. To grant this motion for injunctive relief, not only would the court be enforcing the decision already made at the administrative level, but would also expedite the proper care and treatment that this Plaintiff should have already received.

9. To prolong this Plaintiff's treatment, would only create further damage to his teeth.

Therefore, this Plaintiff respectfully request that this honorable court grant this Motion for injunctive relief, and issue an order that provides for ANY AND ALL dental treatment to properly repair this Plaintiff's dental needs.

  
Kevin C. Brathwaite  
1181 Paddock Rd.  
Smyrna DE.  
19977

DATED: August, 14<sup>th</sup>, 2007

DEPARTMENT OF CORRECTION  
Bureau of Prisons  
245 McKee Road  
Dover, Delaware 19904

March 12, 2007

17-BL-8

Inmate BRATHWAITE KEVIN C  
SBI # 00315294  
DCC Delaware Correctional Center  
SMYRNA DE, 19977

Dear KEVIN BRATHWAITE:

We have reviewed your Grievance Case # 46948 dated 06/08/2006.

Based upon the documentation presented for our review, we uphold your appeal request.

Accordingly, there is no further issue to mediate nor Outside Review necessary as provided by BOP Procedure 4.4 entitled "Inmate Grievance Procedure", Level III appeals.

Sincerely,

Richard Kearney  
Bureau Chief

Exhibit-A

**DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261**

**Date: 03/13/2007**

## **GRIEVANCE REPORT**

### OFFENDER GRIEVANCE INFORMATION

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46948	Grievance Date : 06/08/2006	Category : Individual
Status : Resolved	Resolution Status : Level 3	Resol. Date : 03/13/2007
Grievance Type: Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

### OFFENDER GRIEVANCE DETAILS

**Description of Complaint:** Inmate claims: My front teeth have developed an infection and the dentist told me that I need a root canal which can only be approved by the DOC.

**Remedy Requested** : That I be given a root canal to properly treat the infection in my teeth.

### INDIVIDUALS INVOLVED

Type	SBI #	Name
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### ADDITIONAL GRIEVANCE INFORMATION

Medical Grievance : YES	Date Received by Medical Unit : 06/20/2006
Investigation Sent : 06/20/2006	Investigation Sent To : Rodweller, Deborah
<b>Grievance Amount :</b>	

**DCC Delaware Correctional Center**  
**Smyrna Landing Road**  
**SMYRNA DE, 19977**  
**Phone No. 302-653-9261**

Date: 03/13/2007

**INFORMAL RESOLUTION****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI#</b> : 00315294	<b>Institution</b> : DCC
<b>Grievance #</b> : 46948	<b>Grievance Date</b> : 06/08/2006	<b>Category</b> : Individual
<b>Status</b> : Resolved	<b>Resolution Status</b> : Level 3	<b>Inmate Status</b> :
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date</b> : 06/08/2006	<b>Incident Time</b> :
<b>IGC</b> : Merson, Lise M	<b>Housing Location</b> :Bldg 17, Lower, Tier B, Cell 8, Single	

**INFORMAL RESOLUTION**

<b>Investigator Name</b> : Rodweller, Deborah	<b>Date of Report</b> 06/20/2006
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**Investigation Report** : o documentation in chart re:need for root canal.  
placed on op list for fillings on 6-08-06.  
Approx 4 mth waiting list according to dentist Zimble.  
Next level.

**Reason for Referring:**

<b>Investigator Name</b> : Eller, Gail	<b>Date of Report</b> 11/15/2006
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**Investigation Report** : Inmate instructed to put in a sick call request for dental and be specific as to questionable infection in front teeth.

**Reason for Referring:**

**Offender's Signature:** \_\_\_\_\_

**Date** : \_\_\_\_\_

**Witness (Officer)** : \_\_\_\_\_

DCC Delaware Correctional Center  
 Smyrna Landing Road  
 SMYRNA DE, 19977  
 Phone No. 302-653-9261

Date:03/13/2007

**GRIEVANCE INFORMATION - IGC****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI#</b> : 00315294	<b>Institution</b> : DCC
<b>Grievance #</b> : 46948	<b>Grievance Date</b> : 06/08/2006	<b>Category</b> : Individual
<b>Status</b> : Resolved	<b>Resolution Status</b> : Level 3	<b>Inmate Status</b> :
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date</b> : 06/08/2006	<b>Incident Time</b> :
<b>IGC</b> : Merson, Lise M	<b>Housing Location</b> : Bldg 17, Lower, Tier B, Cell 8, Single	

**IGC**

**Medical Provider:** \_\_\_\_\_ **Date Assigned** \_\_\_\_\_

**Comments:** \_\_\_\_\_

**Forward to MGC**       **Forward to Medical Provider**       **Warden Notified**

**Forward to RGC**      **Date Forwarded to MGC :** 09/27/2006

**Offender Signature Captured**      **Date Offender Signed** : \_\_\_\_\_

DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE INFORMATION - Appeal****OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46948	Grievance Date : 06/08/2006	Category : Individual
Status : Resolved	Resolution Status : Level 3	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

**APPEAL REQUEST**

Appeal received 14 November 2006.

Inmate states: The damage that was done to my front teeth is of no fault of mine. An infection has developed that requires a root canal. This problem has been ongoing since Oct., 9th 2004. the dentist told me that the only way I can get a root canal is if it gets approved by the DOC. The infection on my front teeth seems to be getting worse. So at this time I am requesting that my front teeth be repaired and that I get a root canal as soon as possible.

**REMEDY REQUEST**

## GRIEVANCE INFORMATION - BGO

### OFFENDER GRIEVANCE INFORMATION

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46948	Grievance Date : 06/08/2006	Category : Individual
Status : Resolved	Resolution Status : Level 3	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

### REFERRED TO

Due Date : 12/05/2006      Referred to: Person      Name: Welch, James

### Type of Information Requested :

Grievant requests root canal & treatment for infection.

### Response to Information Requested :

### DECISION

Date Received : 11/17/2006

Decision Date : 02/06/2007      Vote : Uphold

### Comments :

Grievant needs dental care (fillings and root canal).



DCC Delaware Correctional Center  
 Smyrna Landing Road  
 SMYRNA DE, 19977  
 Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE INFORMATION - Bureau Chief****OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46948	Grievance Date : 06/08/2006	Category : Individual
Status : Resolved	Resolution Status : Level 3	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

**DECISION**

Decision Date: 03/12/2007      Vote : Uphold

Comments :

**GRIEVANCE INFORMATION - MGC****OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46948	Grievance Date : 06/08/2006	Category : Individual
Status : Resolved	Resolution Status: Level 3	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

**MGC**

Date Received : 09/27/2006      Date of Recommendation: 11/16/2006

**GRIEVANCE COMMITTEE MEMBERS**

Person Type	SBI #	Name	Vote
Staff		Eller, Gail	Deny
Staff		Branch, Adriene	Deny
Staff		Gordon, Oshenka	Deny
Staff		McCleanor, Michael	Abstain

**VOTE COUNT**

Uphold : 0

Deny : 3

Abstain : 1

**TIE BREAKER**

Person Type	SBI #	Name	Vote

**RECOMMENDATION**

Hearing held Monday 13 November 2006.

Deny: Submit a sick call request for the dentist about ? infection in front teeth.

DEPARTMENT OF CORRECTION  
Bureau of Prisons  
245 McKee Road  
Dover, Delaware 19904

March 12, 2007

17, B-1-8

Inmate BRATHWAITE KEVIN C  
SBI # 00315294  
DCC Delaware Correctional Center  
SMYRNA DE, 19977

Dear KEVIN BRATHWAITE:

We have reviewed your Grievance Case # 46949 dated 06/08/2006.

Based upon the documentation presented for our review, we uphold your appeal request.

Accordingly, there is no further issue to mediate nor Outside Review necessary as provided by BOP Procedure 4.4 entitled "Inmate Grievance Procedure", Level III appeals.

Sincerely,

Richard Kearney  
Bureau Chief

Exhibit - B

DCC Delaware Correctional Center  
 Smyrna Landing Road  
 SMYRNA DE, 19977  
 Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE REPORT****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI#</b> : 00315294	<b>Institution</b> : DCC
<b>Grievance #</b> : 46949	<b>Grievance Date</b> : 06/08/2006	<b>Category</b> : Individual
<b>Status</b> : Resolved	<b>Resolution Status</b> : Level 3	<b>Resol. Date</b> : 03/13/2007
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date</b> : 06/08/2006	<b>Incident Time</b> :
<b>IGC</b> : Merson, Lise M	<b>Housing Location</b> : Bldg 17, Lower, Tier B, Cell 8, Single	

**OFFENDER GRIEVANCE DETAILS**

**Description of Complaint:** Inmate claims: I was told today that I would have to wait many months to have three teeth filled. If I have to wait that long, then by the time I am called for fillings the teeth will be even more decayed.

**Remedy Requested** : That I get dental treatment ASAP.

**INDIVIDUALS INVOLVED**

Type	SBI #	Name
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**ADDITIONAL GRIEVANCE INFORMATION**

<b>Medical Grievance</b> : YES	<b>Date Received by Medical Unit</b> : 06/20/2006
<b>Investigation Sent</b> : 06/20/2006	<b>Investigation Sent To</b> : Rodweller, Deborah
<b>Grievance Amount</b> :	

DCC Delaware Correctional Center  
 Smyrna Landing Road  
 SMYRNA DE, 19977  
 Phone No. 302-653-9261

Date: 03/13/2007

**INFORMAL RESOLUTION****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI#</b> : 00315294	<b>Institution</b> : DCC
<b>Grievance #</b> : 46949	<b>Grievance Date</b> : 06/08/2006	<b>Category</b> : Individual
<b>Status</b> : Resolved	<b>Resolution Status:</b> Level 3	<b>Inmate Status:</b>
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date</b> : 06/08/2006	<b>Incident Time:</b>
<b>IGC</b> : Merson, Lise M	<b>Housing Location:</b> Bldg 17, Lower, Tier B, Cell 8, Single	

**INFORMAL RESOLUTION**

<b>Investigator Name</b> : Rodweller, Deborah	<b>Date of Report</b> 06/20/2006
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**Investigation Report** : Only 1 sick call in chart dated 05-22-06.  
 placed on 4 mth waiting list for fillings according to Dr Zimble.

**Reason for Referring:**

<b>Investigator Name</b> : Eller, Gail	<b>Date of Report</b> 11/15/2006
--	----------------------------------

**Investigation Report** : Inmate is on the dental list and will be notified when the time arrives to be seen.

**Reason for Referring:**

**Offender's Signature:** \_\_\_\_\_

**Date** : \_\_\_\_\_

**Witness (Officer)** : \_\_\_\_\_

**DCC Delaware Correctional Center**  
**Smyrna Landing Road**  
**SMYRNA DE, 19977**  
**Phone No. 302-653-9261**

Date: 03/13/2007

**GRIEVANCE INFORMATION - IGC****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI#</b> : 00315294	<b>Institution :</b> DCC
<b>Grievance #</b> : 46949	<b>Grievance Date</b> : 06/08/2006	<b>Category</b> : Individual
<b>Status</b> : Resolved	<b>Resolution Status</b> : Level 3	<b>Inmate Status</b> :
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date</b> : 06/08/2006	<b>Incident Time</b> :
<b>IGC</b> : Merson, Lise M	<b>Housing Location</b> : Bldg 17, Lower, Tier B, Cell 8, Single	

**IGC**

**Medical Provider:** \_\_\_\_\_ **Date Assigned** \_\_\_\_\_

**Comments:** \_\_\_\_\_

<input checked="" type="checkbox"/> Forward to MGC	<input type="checkbox"/> Forward to Medical Provider	<input type="checkbox"/> Warden Notified
<input type="checkbox"/> Forward to RGC	<b>Date Forwarded to MGC :</b> 09/27/2006	
<input type="checkbox"/> Offender Signature Captured	<b>Date Offender Signed</b> :	

**DCC Delaware Correctional Center**  
**Smyrna Landing Road**  
**SMYRNA DE, 19977**  
**Phone No. 302-653-9261**

Date: 03/13/2007

**GRIEVANCE INFORMATION - Appeal****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI#</b> : 00315294	<b>Institution</b> : DCC
<b>Grievance #</b> : 46949	<b>Grievance Date</b> : 06/08/2006	<b>Category</b> : Individual
<b>Status</b> : Resolved	<b>Resolution Status</b> : Level 3	<b>Inmate Status</b> :
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date</b> : 06/08/2006	<b>Incident Time</b> :
<b>IGC</b> : Merson, Lise M	<b>Housing Location</b> : Bldg 17, Lower, Tier B, Cell 8, Single	

**APPEAL REQUEST**

Appeal received 14 November 2006.

Inmate states: Over the past two (2) years I have submitted numerous sick call request to have my fillings replaced and nothing has been done. On Sept, 25th I was called to the dentist office and she didn't even examine my teeth or do x-rays or anything. all she did was ask me to sign off on a grievance. When I refused to sign off, she told me I would not be seen for Nine (9) to twelve (12) months. The damage to my teeth is only getting worse and it's already been over two (2) years.

**REMEDY REQUEST**

DCC Delaware Correctional Center  
 Smyrna Landing Road  
 SMYRNA DE, 19977  
 Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE INFORMATION - BGO****OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46949	Grievance Date : 06/08/2006	Category : Individual
Status : Resolved	Resolution Status : Level 3	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

**REFERRED TO**

Due Date : 12/05/2006      Referred to: Person      Name: Welch, James

**Type of Information Requested :**

Grievant reports elongated delay in receiving dental services.

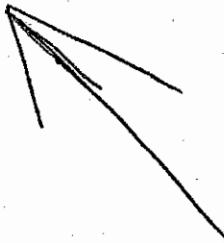
**Response to Information Requested :****DECISION**

Date Received : 11/16/2006

Decision Date : 02/06/2007      Vote : Uphold

**Comments :**

Grievant needs fillings. His sick call is dated 5/22/06



## GRIEVANCE INFORMATION - Bureau Chief

### OFFENDER GRIEVANCE INFORMATION

Offender Name : BRATHWAITE, KEVIN C      SBI# : 00315294      Institution : DCC  
Grievance # : 46949      Grievance Date : 06/08/2006      Category : Individual  
Status : Resolved      Resolution Status : Level 3      Inmate Status :  
Grievance Type: Health Issue (Medical)      Incident Date : 06/08/2006      Incident Time :  
IGC : Merson, Lise M      Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single

### DECISION

Decision Date: 03/12/2007      Vote : Uphold

Comments :

## GRIEVANCE INFORMATION - MGC

### OFFENDER GRIEVANCE INFORMATION

Offender Name : BRATHWAITE, KEVIN C      SBI# : 00315294      Institution : DCC  
Grievance # : 46949      Grievance Date : 06/08/2006      Category : Individual  
Status : Resolved      Resolution Status: Level 3      Inmate Status :  
Grievance Type: Health Issue (Medical)      Incident Date : 06/08/2006      Incident Time :  
IGC : Merson, Lise M      Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single

### MGC

Date Received : 09/27/2006

Date of Recommendation: 11/16/2006

### GRIEVANCE COMMITTEE MEMBERS

Person Type	SBI #	Name	Vote
Staff		Eller, Gail	Deny
Staff		Gordon, Oshenka	Deny
Staff		Branch, Adriene	Deny
Staff		McCreanor, Michael	Abstain

### VOTE COUNT

Uphold : 0

Deny : 3

Abstain : 1

### TIE BREAKER

Person Type	SBI #	Name	Vote

### RECOMMENDATION

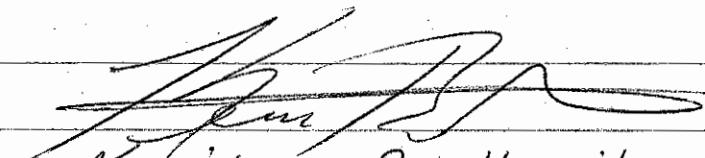
Hearing held Monday 13 November 2006.

Deny: Inmate on dental list - They will schedule inmate as his time arrives.

## Certificate of Service

I Kevin C. Brathwaite, states  
that I have caused a copy of  
the attached motion for injunctive  
relief to be mailed to the following  
party.

JAMES E. DRNEC, ESQ.  
711 King St  
Wilmington DE.  
19801

  
Kevin C. Brathwaite  
1181 Paddock Rd.  
Smyrna DE  
19977

Dated: August, 14<sup>th</sup>, 2007

**PRISONER/PRO SE DOCUMENTS**

\*\*\*\*\*

**Internal office correspondence**  
**DO NOT FILE OR DOCKET THIS FORM**

DATE: 8-16-07 CASE NUMBER # 07-6TO:  GMS (April)  JJF (Lucy)  SLR (Francesca)  \*\*\* (Bob)  MPT (Keith)  
 Other \_\_\_\_\_

The attached document(s) has been scanned into PDF format and placed on your "P:drive". Any deficiencies detected during our screening are noted below. Preliminary actions taken (e.g., copy order quoted, change of address cc: Betty) are noted on this form, and when applicable, a printed copy of our response letter will be attached hereto, as well as scanned to your P:drive for docketing.

Docketing clerks screen papers to determine the correct course of action. If the papers are to be docketed, the pdf version should be available in your P:drive. When a deficiency or other type of letter is desired, please return this form to the person who prepared it, along with your intended response. The Clerk's Office will prepare an appropriate response letter and place it into your P:drive for docketing. We will mail the response letter to the pro se party or inmate; and ECF parties will be noticed electronically.

**SCREENING RESULTS/ACTION REQUIRED**BO(BY)  
 (First name) Document is located in your P:drive for docketing: No deficiency was noted by the Clerk's Office. Deficiency noted by the Clerk's Office (Issue):

- motion for Injunctive Relief  
 - 1st Set interrogs - CMS  
 - Answer to interrogs  
 - Response to Answer to complaint  
 - Response to motion to dismiss (23)

 Deficiency noted by Docket Clerk:(BY)  
 (First name) Clerk's Office response letter needed (Issue): \_\_\_\_\_ Pro Se Law Clerk review needed (Issue): \_\_\_\_\_ Followup action taken by Clerk's Office or Pro Se Law Clerk:(BY)  
 (First name)

*NOTE: Preferences vary regarding accepting or rejecting deficient pleadings. The Clerk's Office will convert original documents to PDF and submit them to the docketing clerk for review prior to docketing. If a Clerk's Office response is needed, the docket clerk will note the action required. If Pro Se Law Clerk coordination is applicable, the docketing clerk sends the papers to the appropriate law clerk for coordination.*